

Homak Manufacturing Company, Inc., and/or Howard B. Samuels, Trustee/Assignee, as alter egos and/or single employer and International Brotherhood of Teamsters, Local 714, AFL-CIO. Case 13-CA-41619

November 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND
SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the amended complaint (complaint). Upon a charge and amended charge filed by the Union on January 12 and February 18, 2004, respectively, the General Counsel issued the complaint on October 1, 2004 against Homak Manufacturing Company, Inc. and/or Howard B. Samuels, Trustee/Assignee, as alter egos and/or single employer (the Respondent) alleging that it had violated Section 8(a)(1) and (5) of the Act.¹

On October 15, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On October 19, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed within 14 days from service of the complaint, all the allegations in the complaint would be considered admitted. As stated above, although Respondent Homak filed an answer to the original complaint, it subsequently withdrew its answer on October 8, 2004. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.²

¹ Based on the same charge and amended charge, the General Counsel had issued the original complaint on April 19, 2004, against Homak Manufacturing Company, Inc. (Respondent Homak). Respondent Homak filed an answer on April 28, 2004. (The General Counsel's motion inadvertently states that the answer was filed on April 24, 2004.) On October 8, 2004, however, Respondent Homak withdrew its answer to the original complaint.

² See *Maislin Transpot*, 274 NLRB 529 (1985).

Further, after the issuance of the complaint, Respondent Homak's designated trustee/assignee, Respondent Howard B. Samuels, advised the Region in writing on October 7, 2004, that the Respondent would not be filing an answer to the complaint. In fact, no answer to the complaint has been filed.

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Homak, an Illinois corporation with offices and a place of business in Bedford Park, Illinois, has been engaged in the sheet metal fabrication of tool boxes, gun cabinets, and medical carts. During the 12-month period preceding the issuance of the complaint, a representative period, Respondent Homak, in conducting its business operations described above, sold and shipped from its Bedford Park, Illinois facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Illinois. We find that Respondent Homak is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

On or about September 10, 2004, Respondent Homak, through its board of directors and shareholders, entered into a Trust Agreement and Assignment for the Benefit of Creditors (the Agreement) with Howard B. Samuels, of Rally Capital Services, under which Howard B. Samuels was duly designated by Respondent Homak as its trustee/assignee.

By virtue of the Agreement, Howard B. Samuels (Respondent Samuels) was granted full possession of Respondent Homak's property, assets, and operations, and full authority and responsibility to liquidate Respondent Homak's business and distribute the proceeds therefrom to the Respondent's creditors.

Further, by virtue of the Agreement, Respondent Samuels, as trustee/assignee, was given full authority to, among other things, settle any and all claims on behalf of Respondent Homak, with full power to compromise such claims, or in the discretion of the trustee/assignee, to sue or be sued, and to prosecute or defend any claim or claims of any nature existing against or in favor of Respondent Homak.

Based upon the foregoing, we find that Respondent Homak and Respondent Samuels are alter egos and/or a single employer within the meaning of the Act.

At all material times, International Brotherhood of Teamsters, Local 714, AFL-CIO (the Union) has been a

labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Tom Pold	-	Executive Vice President
Alfonso Navarro	-	Plant Manager
Jorge Sanchez	-	Inventory Control Manager
Andy Rios	-	Production Manager
Jaime Hurtado	-	Foreman
Salvadore Enciso	-	Foreman

On about November 25, 2003, the Respondent, by Tom Pold at Respondent Homak's facility, orally promulgated and since then has maintained the overly broad no-solicitation rule that employees may not speak to other employees or leave their workstations to go anywhere else other than the office.

On about December 12, 2003, the Respondent, by Alfonso Navarro, at the Respondent's facility:

(1) Interrogated employees regarding employees' union and/or protected concerted activities.

(2) Threatened employees with discharge if they supported the Union or engaged in union and/or concerted activities.

On about December 16, 2003, the Respondent, by Pold and Navarro, at Respondent Homak's facility, interrogated employees regarding employees' union and/or protected concerted activities.

On about December 16, 2003, the Respondent, by Navarro, at Respondent Homak's facility, solicited grievances from employees and promised to remedy those grievances to discourage employees from supporting the Union.

On about December 17, 2003, the Respondent, by Salvadore Enciso, at Respondent Homak's facility, threatened employees with discharge if they supported the Union or engaged in union and/or protected concerted activities.

On about December 18, 2003, the Respondent, by Pold and Navarro, at the Respondent's facility:

(1) Threatened employees with discharge if they supported the Union or engaged in union and/or protected concerted activities.

(2) Threatened employees with unspecified reprisals if they supported the Union or engaged in union and/or protected concerted activities.

(3) Interrogated employees regarding employees' union and/or protected concerted activities.

(4) Promised a wage increase and threatened to withhold a wage increase to discourage employees from supporting the Union.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance department employees, shipping and receiving employees, truck drivers, leadmen and helpers/set-up employed by the Employer at its facility currently located at 5151 W. 73rd Street, Bedford Park, Illinois; but excluding temporary employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

On about December 19, 2003, a majority of the employees in the unit voted in a Board-conducted election for the Union to be their exclusive collective-bargaining representative.

On January 6, 2004, the Union was certified as the exclusive collective-bargaining representative of the unit.

At all material times, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive bargaining representative of the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On about December 23, 2003, the Respondent laid off unit employees including, but not limited to, those listed in Appendix A of this decision.

The layoff of the unit employees relates to wages, hours, and other terms and conditions of employment of the unit, and are mandatory subjects for the purpose of collective bargaining.

The Respondent laid off the unit employees without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSIONS OF LAW

1. The Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby violated Section 8(a)(1) of the Act by: (a) promulgating and maintaining an overly broad no-solicitation rule; (b) interrogating employees regarding employees' union

and/or protected concerted activities; (c) threatening employees with discharge if they supported the Union or engaged in union and/or concerted activities; (d) soliciting grievances from employees and promising to remedy those grievances to discourage employees from supporting the Union; (e) threatening employees with unspecified reprisals if they supported the Union or engaged in union and/or protected concerted activities; and (f) promising a wage increase and threatening to withhold a wage increase to discourage employees from supporting the Union.

2. By laying off unit employees without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent concerning the layoffs and their effects, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to notify and bargain with the Union about the decision to lay off unit employees on about December 23, 2003 and the effects of the layoff, we shall order the Respondent to bargain with the Union, on request, about the layoff decision and its effects.

Further, we shall order the Respondent to offer the employees laid off on about December 23, 2003, including those listed in Appendix A, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct.³ Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Homak Manufacturing Company, Inc. and/or Howard B. Samuels, Trustee/Assignee, as Alter

Egos and/or Single Employer, Bedford Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally laying off employees in the following unit without providing International Brotherhood of Teamsters, Local 714, AFL-CIO with notice and an opportunity to bargain concerning the decision to lay off employees and the effects of that decision. The unit is:

All full-time and regular part-time production and maintenance department employees, shipping and receiving employees, truck drivers, leadmen and helpers/set-up employed by the Employer at its facility currently located at 5151 W. 73rd Street, Bedford Park, Illinois; but excluding temporary employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Promulgating and maintaining an overly broad no-solicitation rule that employees may not speak to other employees or leave their workstations to go anywhere else other than the office.

(c) Interrogating employees regarding employees' union and/or protected concerted activities.

(d) Threatening employees with discharge and unspecified reprisals if they supported the Union or engaged in union and/or protected concerted activities.

(e) Soliciting grievances from employees and promising to remedy those grievances to discourage employees from supporting the Union.

(f) Promising a wage increase and threatening to withhold a wage increase to discourage employees from supporting the Union.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the decision to lay off employees on about December 23, 2003, and the effects of that decision, and put in writing and sign any agreement reached as a result of such bargaining.

(b) Within 14 days from the date of this Order, offer the employees laid off on about December 23, 2003, including those listed in Appendix A, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(c) Make whole the laid-off employees, including those listed in Appendix A, for any loss of earnings and other benefits suffered as a result of their unlawful lay-

³ See, e.g., *Pan American Grain Co.*, 343 NLRB No. 47 (2004).

offs, with interest, in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bedford Park, Illinois, copies of the attached notice marked "Appendix B."⁴ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 25, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

Juan Ortega	Guiermo Estrada
Wilson Velez	Ramon Guzman
Carlos Ramirez	Gabriel Herrera
Amauri Ruiz	Cresencio Morales
Jose Alvarez	Jose G. Barragan
Concepcion (Pedro) Marchan	Delfino Espinosa-Garcia
Juan Sandoval	Hugo Castillo
Leonel Segura	Jose Rojo
Joseph W. Valentin	Luis Govea
Jose Esparza	Rafael Ramirez
Bulfrano Damian	Jose Mendoza
Perfecto Garcia	Margarito Jiminez-Salgado
Emeterio Plascencia	Regino Raniirez.
Hector Cordova	Francisco Escobedo-Martinez
Jose Esparza Sr.	Alfonso Murillo
Jesus Carranza	Bledi Canino
Brian Mosley	Lawerence R. Olivas, Jr.
Gonzalo Oliveros	Ignacio Ceron
Bulmaro Perez	Margarita Vergara
Luis J. Cardenas	Rodrigo Hurtado
Michel Baptiste	Armando Ortega
Otto Colocho	Gardell Torres
Emiliano Diaz	Nicols Fernandez
Manuel Rodriguez	Eleasar Sanchez
Rodrigo Lopez	Bonel Ulysse
Wenceslao Cruz-Torrez	Antonio Guardado
Trinidad Cintora	Maria Cortez
Patricio Rodriguez	Augustin Sanchez
Pedro Arreola	Maria Guadalupe Valdovinos
Silvestre Gonzalez	Reyna Murillo
Jose Rodriguez	Luz Maria Tavares
Cirilo Guzman	Jean Daniel Sanon
Tiburcio Salinas	Jose G. Santillan
Ricardo Alcaraz	Gustavo Hernandez
Pantaleon Rodriguez	Maria Rosario Valdovinos
Joaquin Bahena	Raul Perez
Victor Feliciano	Efren Delgado-Arollo
Ramiro Dominguez	Israel Abonce
Rosendo Resendez	Jose A. Vasquez
Guadalupe (Jorge) Salinas	Luis A. Buther Oyola
Hermينو Carlos	Angel Herrera

Javier Briones	Bardomiano Gomez
Roberto Flores	Ruben Moreno Arredondo
Reyes Ruiz	Douglas Guyette
Lucas Serrano	Edward Rios
Raul Montoya	Juan Gomez
Ignacio Rivas	Morgan Gonzalez
Jesus Gonzalez	Matthew Wilkinson
Moises Garcia	Ancelmo Saucedo

APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT unilaterally lay off employees in the following unit without providing International Brotherhood of Teamsters, Local 714, AFL-CIO with notice and an opportunity to bargain concerning the decision to lay off employees and the effects of that decision. The unit is:

All full-time and regular part-time production and maintenance department employees, shipping and receiving employees, truck drivers, leadmen and helpers/set-up employed by us at our facility currently located at 5151 W. 73rd Street, Bedford Park, Illinois; but excluding temporary employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

WE WILL NOT promulgate and maintain an overly broad no-solicitation rule that employees may not speak to other employees or leave their workstations to go anywhere else other than the office.

WE WILL NOT interrogate employees regarding their union and/or protected concerted activities.

WE WILL NOT threaten employees with discharge and unspecified reprisals if they supported the Union or engaged in union and/or protected concerted activities.

WE WILL NOT solicit grievances from employees and promise to remedy those grievances to discourage employees from supporting the Union.

WE WILL NOT promise a wage increase and threaten to withhold a wage increase to discourage employees from supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the decision to lay off employees on about December

23, 2003, and the effects of that decision, and put in writing and sign any agreement reached as a result of such bargaining.

WE WILL, within 14 days from the date of the Board's Order, offer the employees laid off on about December 23, 2003, including those listed in the Attachment to this Notice, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole the laid-off employees, including those listed in the following Attachment, for any loss of earnings and other benefits suffered as a result of their unlawful layoffs, with interest.

HOMAK MANUFACTURING COMPANY, INC.,
AND/OR HOWARD B. SAMUELS,
TRUSTEE/ASSIGNEE, AS ALTER EGOS AND/OR
SINGLE EMPLOYER

ATTACHMENT

Juan Ortega	Guillermo Estrada
Wilson Velez	Ramon Guzman
Carlos Ramirez	Gabriel Herrera
Amauri Ruiz	Cresencio Morales
Jose Alvarez	Jose G. Barragan
Concepcion (Pedro) Marchan	Delfino Espinosa-Garcia
Juan Sandoval	Hugo Castillo
Leonel Segura	Jose Rojo
Joseph W. Valentin	Luis Govea
Jose Esparza	Rafael Ramirez
Bulfrano Damian	Jose Mendoza
Perfecto Garcia	Margarito Jiminez-Salgado
Emeterio Plascencia	Regino Raniirez.
Hector Cordova	Francisco Escobedo-Martinez
Jose Esparza Sr.	Alfonso Murillo
Jesus Carranza	Bledi Canino
Brian Mosley	Lawerence R. Olivas, Jr.
Gonzalo Oliveros	Ignacio Ceron
Bulmaro Perez	Margarita Vergara
Luis J. Cardenas	Rodrigo Hurtado
Michel Baptiste	Armando Ortega
Otto Colocho	Gardell Torres
Emiliano Diaz	Nicols Fernandez
Manuel Rodriguez	Eleasar Sanchez
Rodrigo Lopez	Bonel Ulysse
Wenceslao Cruz-Torrez	Antonio Guardado
Trinidad Cintora	Maria Cortez
Patricio Rodriguez	Augustin Sanchez
Pedro Arreola	Maria Guadalupe Valdovinos
Silvestre Gonzalez	Reyna Murillo
Jose Rodriguez	Luz Maria Tavares
Cirilo Guzman	Jean Daniel Sanon
Tiburcio Salinas	Jose G. Santillan
Ricardo Alcaraz	Gustavo Hernandez
Pantaleon Rodriguez	Maria Rosario Valdovinos
Joaquin Bahena	Raul Perez
Victor Feliciano	Effren Delgado-Arollo
Ramiro Dominguez	Israel Abonce
Rosendo Resendez	Jose A. Vasquez
Guadalupe (Jorge) Salinas	Luis A. Buther Oyola

Hermينو Carlos	Angel Herrera
Javier Briones	Bardomiano Gomez
Roberto Flores	Ruben Moreno Arredondo
Reyes Ruiz	Douglas Guyette
Lucas Serrano	Edward Rios
Raul Montoya	Juan Gomez
Ignacio Rivas	Morgan Gonzalez
Jesus Gonzalez	Matthew Wilkinson
Moises Garcia	Ancelmo Saucedo